

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nettie Lawrence	:	
	:	
v.	:	C-2019-3013305
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

The formal Complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On September 25, 2019, Nettie Lawrence (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company). In the Complaint, Ms. Lawrence alleges that PGW is trying to shut off her service, that she would like a review of high bills and that she would like a payment arrangement. She also alleges that PGW did not respond to her request to inspect the service address.

On October 23, 2019, Respondent filed its Answer denying the material averments of the Complaint and stating that the Complainant has not "completed" a previous payment arrangement. The Respondent further averred that on July 19, 2019, the Company issued a 10-day shut-off notice to the Complainant because she has a past due balance.

On October 29, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for December 2, 2019 at 10:00 a.m. On October 31, 2019, a Corrected Hearing Notice was issued to the parties which corrected the docket number only; the hearing date and time remained scheduled for December 2, 2019 at 10:00 a.m.

On November 1, 2019, a Prehearing Order was issued which advised the parties of various applicable procedures to the hearing, as well as reminded the parties of the date and time of the hearing.

The hearing convened as scheduled on December 2, 2019 at 10:00 a.m. The Complainant did not appear for the hearing; PGW appeared and was represented by Laureto Farinas, Esquire.

The Company moved that the matter be dismissed for failure of the Complainant to appear and prosecute her Complaint. The Motion was taken under advisement.

The record closed on December 23, 2019, upon receipt of the transcript. PGW's Motion to Dismiss for Failure to Prosecute is ready for a decision.

#### FINDINGS OF FACT

1. The Complainant is Nettie Lawrence, who resides in Philadelphia, Pennsylvania.
2. The Respondent is Philadelphia Gas Works (PGW).
3. On September 25, 2019, the Complainant filed this action against PGW.
4. The Respondent filed an Answer on October 23, 2019.

5. On October 29, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for December 2, 2019 at 10:00 a.m.

6. A corrected hearing notice was issued on October 31, 2019, this second notice also stating that the hearing would be held on December 2, 2019 at 10:00 a.m.

7. A prehearing order issued on November 1, 2019 to all parties which reminded the parties of the hearing date and time and advised the Complainant, in bold print, that the matter would be dismissed if she failed to appear; it also advised that the Complainant had the burden of proof.

8. The hearing began as scheduled on December 2, 2019, at 10:00 a.m.

9. On the day of the hearing, PGW was present and represented by Laureto Farinas, Esquire.

10. The Complainant was not present when the hearing began at 10:00 a.m.

11. A recess was taken, and the undersigned confirmed that the Complainant had not contacted the Commission.

12. When the hearing resumed at 10:39 a.m., the Complainant was not present. (Tr. 4).

13. To date, the Complainant has not contacted the Commission about her absence from the hearing.

14. The Hearing Notice and prehearing order mailed to the Complainant were not returned as undeliverable.

15. The Complainant did not request a continuance or provide a statement of good cause for her absence on the scheduled hearing date.

## DISCUSSION

Administrative agencies such as the Commission are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Notice and prehearing order containing the time, date and location were mailed to the Complainant. Neither was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time of the scheduled hearing. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, \*8, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," citing, *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993). The Complainant was notified of the scheduled hearing and did not appear for the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding the hearing. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. The Complainant was advised in the prehearing order that as the Complainant, she had the burden of proof. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F 2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Complainant received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994).
3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016); *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).
5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, she failed to meet her burden of proving she is eligible to the relief that is sought from the Commission. 66 Pa.C.S. § 332(a).

